

330.220 "Absolute auction" defined -- "Reserve auction" defined -- Bids by seller.

- (1) No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall any licensee offer or sell any goods at absolute auction unless:
 - (a) There are no liens or encumbrances on the goods, except current tax obligations, easements, or restrictions of record, in favor of any person, firm, or corporation other than the seller, or unless each and every holder of each and every lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder; or, alternatively, that a financially responsible person, firm, or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefor, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
 - (b) There is the bona fide intention at the time of the advertising and at the time of the auction sale, to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the high bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods would not be transferred to the high bidder; and
 - (c) The auction listing contract contains a binding requirement that the sale be conducted without reserve, by specific inclusion of an acknowledgment by the seller that the seller, or anyone acting upon behalf of the seller, shall not bid at the absolute auction, or otherwise participate in the bidding process.
- (2) Compliance with subsection (1) of this section shall not prohibit:
 - (a) A secured party or other lienholder who is not the seller from bidding at an absolute auction sale, providing that such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer; or
 - (b) Any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution; or
 - (c) The inclusion of nonmisleading advertising of certain goods to be sold at "absolute auction" and the nonmisleading advertising of certain goods to be sold at auction with reserve, within the same advertisement, or for sale at the same date and place, providing that advertisement shall make clearly apparent

through equal or appropriate emphasis, which goods are being sold by each method.

- (3) Any auction sale is, without requirement of announcement at any time, presumed to be with reserve unless the goods are in explicit terms put up at absolute auction. An auction without reserve means an absolute auction. An auction with reserve means the goods may be put up subject to the seller's confirmation or subject to a certain reserve price.
- (4)
 - (a) The provisions of this chapter shall not prohibit any licensee from bona fide bidding on his own behalf at any auction sale, whether absolute or with reserve, provided that his option to do so shall have been fully disclosed, including disclosure to the seller.
 - (b) Except as provided in subsection (2) of this section, the seller may not bid at an absolute auction, nor may anyone bid upon his behalf. No licensee shall knowingly receive such a bid by or on behalf of the seller at an absolute auction.
 - (c) Bids may be made by the seller, or upon the seller's behalf, at any auction with reserve, provided that full disclosure has been made that liberty for such bidding is retained. No licensee shall knowingly receive such a bid in the absence of full disclosure.
 - (d) There shall be no requirement at a with reserve sale that the reserve be announced when it is attained.

Effective: July 14, 1992

History: Amended 1992 Ky. Acts ch. 344, sec. 17, effective July 14, 1992. -- Created 1990 Ky. Acts ch. 170, sec. 10, effective July 13, 1990.